

APR 17 2001

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

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FEDERAL ELECTION
COMMISSION

2001 APR 18 A 9:42

FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL: 01L-02
DATE ACTIVATED: March 9, 2001

SENSITIVE

EXPIRATION OF STATUTE OF
LIMITATIONS: April 26, 2005
STAFF MEMBERS: Mary Beth deBeau
Tara D. Meeker

SOURCE: Internally Generated

RESPONDENTS: George Grogan for U.S. Senate
and Barbara Fajen, as treasurer

RELEVANT STATUTE: 2 U.S.C. § 434(a)(6)(A)

INTERNAL REPORTS CHECKED: Disclosure Reports
Referral Materials

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

The Office of the General Counsel received a referral from the Reports Analysis Division ("RAD") on February 1, 2001. The basis for the referral is the failure of George Grogan for U.S. Senate and Barbara Fajen, as treasurer ("the Respondents"), to file three 48 Hour notifications ("48 Hour Notices") for contributions in the form of candidate loans totaling \$91,000. George Grogan lost the 2000 Primary Election in Nebraska, receiving four percent (4%) of the vote.

II. FACTUAL AND LEGAL ANALYSIS

Based on the Factual and Legal Analysis, see Attachment 1, this Office recommends that the Commission find reason to believe the Respondents violated 2 U.S.C. § 434(a)(6)(A).

21-04-405-1290

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

In addition to the reason to believe recommendation, this Office recommends that the Commission enter into conciliation with the Respondents prior to a finding of probable cause to believe. Attached for the Commission's approval is a proposed conciliation agreement

21-04-405-1291

RR01L-02

First General Counsel's Report

21.04.405.1292

IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that George Grogan for U.S. Senate and Barbara Fajen, as treasurer, violated 2 U.S.C. § 434(a)(6)(A), and enter into conciliation prior to a finding of probable cause to believe.
3. Approve the attached Factual and Legal Analysis, proposed conciliation agreement, and the appropriate letter.

Lois G. Lerner
Acting General Counsel

4/17/01
Date

BY: Abigail A. Shaine
Abigail A. Shaine
Acting Associate General Counsel

Attachments:

1. Factual and Legal Analysis
2. Proposed Conciliation Agreement
3. November 6, 2000 letter from the Committee to RAD

**FEDERAL ELECTION COMMISSION
FACTUAL & LEGAL ANALYSIS**

RESPONDENTS: George Grogan for U.S. Senate
and Barbara Fajen, as treasurer

MUR:

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires principal campaign committees of candidates for federal office to notify in writing either the Secretary of the Senate or the Commission, as appropriate, and the Secretary of State of the appropriate state, of each contribution totaling \$1,000 or more, received by any authorized committee of the candidate after the 20th day but more than 48 hours before any election. 2 U.S.C. § 434(a)(6)(A). The Act further requires notification to be made within 48 hours after the receipt of the contribution and to include the name of the candidate and office sought, the date of receipt, the amount of the contribution, and the identification of the contributor. Id. The notification of these contributions shall be in addition to all other reporting requirements. 2 U.S.C. § 434(a)(6)(B).

The Primary Election in the state of Nebraska was held on May 9, 2000. Pursuant to the Act, George Grogan for U.S. Senate and Barbara Fajen, as treasurer ("the Committee"), were required to notify the Commission, in writing, of all contributions of \$1,000 or more received from April 20 through May 6, 2000, within 48 hours of their receipt. A review of the Committee's 2000 July Quarterly Report identified three contributions in the form of candidate loans received during the aforementioned period, of \$1,000 or more, and totaling \$91,000. The first contribution was made on April 26, 2000 in the amount of \$45,000, the second on May 1, 2000 in the amount of \$16,000 and the third on May 3, 2000 in the amount of \$30,000. The Committee did not submit 48 Hour Notices for these contributions.

On October 24, 2000, a Request For Additional Information ("RFAI") was sent to the Committee by the Reports Analysis Division, noting that the Committee may have failed to file one or more of the required 48 Hour Notices. In a letter dated November 6, 2000, the Committee addressed the issue of 48 Hour Notices by stating, "As [the candidate] had withdrawn from the race and indicated he . . . would not be seeking repayment of any personal funds put into his campaign, we did not feel that the funds constituted a loan and therefore did not require reporting on FEC Form 6." The candidate's asserted withdrawal from the race does not negate the fact that the Committee accepted the contributions and failed to properly report them.

Therefore, there is reason to believe that George Grogan for U.S. Senate and Barbara Fajen, as treasurer, violated 2 U.S.C. § 434(a)(6)(A) by failing to report campaign contributions of \$1,000 or more, received after the 20th day, but more than 48 hours before the primary election, within 48 hours of receipt of the contributions.



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *KCS*

DATE: April 18, 2001

SUBJECT: 01L-02 -First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

SENSITIVE

☒

NON-SENSITIVE

☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

96 Hour TALLY VOTE ☐

DISTRIBUTION

COMPLIANCE

☒

Open/Closed Letters ☐

MUR ☐

DSP ☐

STATUS SHEETS ☐

Enforcement ☐

Litigation ☐

PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐

21-04-495-1296



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LOIS G. LERNER
ACTING GENERAL COUNSEL

FROM: OFFICE OF THE COMMISSION SECRETARY *VW*

DATE: APRIL 23, 2001

SUBJECT: RAD Referral #01L-02 - First General Counsel's Report
dated April 12, 2001.

The above-captioned document was circulated to the Commission
on Monday, April 23, 2001.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Mason	—
Commissioner McDonald	—
Commissioner Sandstrom	<u>XXX</u>
Commissioner Smith	—
Commissioner Thomas	—
Commissioner Wold	—

This matter will be placed on the meeting agenda for Tuesday,
May 1, 2001. Please notify us who will represent your Division before the
Commission on this matter.

21-04-405-1297



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Lois Lerner
Acting General Counsel

FROM: Mary W. Dove/Lisa R. Davis
Office of the Commission Secretary

DATE: April 20, 2001

SUBJECT: RAD Referral #01L-02 - First General Counsel's Report
dated April 17, 2001.

The above-captioned document was circulated to the Commission
on Wednesday, April 18, 2001.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Mason	—
Commissioner McDonald	—
Commissioner Sandstrom	—
Commissioner Smith	—
Commissioner Thomas	<u>XXX FOR THE RECORD</u>
Commissioner Wold	—

21.04.405.1298